

**W. RON ALLEN, FIRST VICE PRESIDENT
NATIONAL CONGRESS OF AMERICAN INDIANS
TESTIMONY ON THE NATIONAL ACADEMY OF PUBLIC ADMINISTRATION
REPORT ENTITLED: 'A STUDY OF MANAGEMENT AND ADMINISTRATION
ON THE BUREAU OF INDIAN AFFAIRS'
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, D.C.
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I. INTRODUCTION

Good morning Chairman Campbell, Vice Chairman Inouye and distinguished members of the Senate Committee on Indian Affairs. My name is W. Ron Allen. I am First Vice President of the National Congress of American Indians (NCAI) and Chairman of the Jamestown S'Klallam Tribe located in Washington State. On behalf of NCAI, the oldest, largest and most representative Indian organization in the nation, I would like to thank you for the opportunity to discuss the National Academy of Public Administration (NAPA) report on the Management and Administration of the BIA.

NCAI was organized in 1944 in response to termination and assimilation policies promulgated by the federal government which proved to be devastating to Indian Nations and Indian people throughout the country. NCAI remains dedicated to advocating on behalf of the interests of our 260 member tribes on a myriad of issues including whether the Bureau of Indians Affairs (BIA) is fulfilling its responsibility to administer federal Indian policy and to discharge the federal Indian trust responsibility for American Indian and Alaska Natives.

On April 28, 1999, NCAI had the opportunity to provide testimony to this Committee on the mission and capacity of the Bureau of Indian Affairs (BIA). In that testimony, we provided numerous recommendations regarding re-organization of the BIA consistent with its responsibility to administer federal Indian policy and to discharge the federal Indian trust responsibility for American Indian tribes, Alaska Native villages and tribal organizations. Tribal governmental self-sufficiency has increased throughout Indian Country, due in large part to the enactment of self-determination and self-governance initiatives. Increased tribally-controlled government functions, however, have fostered a natural tendency for tribes to begin critically analyzing the effectiveness of the BIA.

At the NCAI 55th Annual Session in Myrtle Beach, South Carolina, Assistant Secretary Kevin Gover reported to the tribes, *"...the Bureau must be accountable to Congress, the Department and the tribes for its management and administration of federal funds. To this end, a systematic management review of all BIA operations is being undertaken. When this process is completed, we will bring to the tribes our proposal for reorganizing BIA management and administration internal of affairs in matters of accounting, property management, records management, personnel, etc."* To meet this objective, the BIA requested the National Academy of Public Administration (NAPA) to conduct this comprehensive study. Their study was completed in August 1999.

Mr. Chairman, I am pleased that you have provided this opportunity for tribes to voice their opinions on the NAPA report regarding the management and administration of the BIA. While the NAPA study identifies a number of recommended remedies that would improve the quality, efficiency and cost effectiveness of the BIA's operations, we are concerned over the BIA's proposal to implement these recommendations as they affect the Bureau's mission of empowering the tribal governments. NCAI's testimony will highlight these concerns, problems areas, conflicting goals and outline specific suggested actions.

II. IMPACT OF TRIBAL SELF-DETERMINATION & SELF-GOVERNANCE ON BIA MANAGEMENT CAPABILITIES

One of the most important precepts in the Indian Self-Determination and Self-Governance Policy was that each tribe exercised its government-to-government relationship with the Federal government based on its unique community needs. Due to the success of the implementation of the Self-Determination and Self-Governance legislation, the BIA has experienced great pressure to transfer all non-inherent federal programs over to the tribes and reorganize its operations to carry out those functions and duties it cannot transfer because they are inherently federal.

In recent years, as an essential phase of these initiatives, the BIA (along with tribal participation) has been engaged in a "tribal shares process" which includes an agency wide identification of: (1) inherent federal functions and responsibilities; (2) programs and services which are eligible for contracting or compacting by tribes; and (3) associated funding levels. Although implementation of this process has varied across BIA areas and has met with some resistance, this process will continue to be the method to downsize the Bureau-- at the desire of the tribes.

The BIA Central and Regional office budgets (after determination of tribal shares) is the "residual." The identification of BIA residual funding is essential in order for the Bureau to carry out its inherent federal functions and/or trust responsibility for all tribes. However, we strongly believe that adequate funding for a minimum BIA base to carry out its trust responsibility must be kept in balance with adequate funding for tribal programs.

The NAPA report recommends that the BIA immediately establish a Policy, Management and Budget Office. The report further recommends that the BIA conduct a "careful workforce analysis" of the Central, Area and Agency offices to determine the appropriate levels of staffing for these administrative functions. Over the past year, the BIA has failed to complete the tribal shares process which includes the identification of inherent federal functions and associated residual funding levels. We believe that the NAPA study of conducting a workforce analysis of the BIA is consistent (and compliments) the tribal shares process. We strongly urge the BIA to complete its analysis and to involve tribes in the defining of these administrative and management functions.

III. Self-Determination and Self-Governance Policy

There are several very disturbing statements included in the NAPA report regarding tribal self-determination and self-governance. In the Foreword, the report states, "...*before* all of the tribes attain self-determination, it is necessary that the Bureau *properly carry out its existing functions [emphasis added]*." Those interviewed for the study asserted that several factors appear to be impeding the movement toward self-determination and self-governance, thus thwarting implementing of federal Indian policy. The report states that "*BIA managers believe the statutory restrictions on the oversight of contracts, compacts and grants creates the potential for abuse.*" Further, "*there were problems with some of the tribes that had graduated to self-governance; and... that the single audit is not designed to monitor the adequacy of program performance.*"

These statements are particularly offensive given the Administration's commitment to tribal self-determination and the empowerment of tribal governments. Specifically, it asserts that tribes are not accountable for those BIA programs they operate and that tribal self-determination cannot be achieved until the BIA demonstrates administrative competence. These statements and allegations fail to recognize the history and fundamental principles of self-determination. They also fail to recognize the countless success stories that exhibit the improved effectiveness of the tribes managing and prioritizing the use of these resources. These comments included in the NAPA report are more focused on the BIA's loss of control over the tribes than the success of the devolution movement in the Self-Governance initiative.

As Chairman of one of the original self-governance tribes, I have had the privilege of being able to participate in our effort to streamline the federal system based on what we refer to as tribally driven initiatives. Since 1988, there have been so many tribes who have enjoyed a great deal of success in implementing such tribal initiatives and feel that exhibiting their accomplishments shows the Congress and the Administration that tribes can take a bureaucratic system and reshape, modify and downsize it into an increasingly effective and efficient government. More important, those federal resources identified in the streamlining process can be transferred directly to the tribes to further increase program and service deliveries.

As this Committee is well aware, when the Self-Governance Demonstration Project was enacted in 1990, Congress was addressing a bloated BIA bureaucracy who under the aegis of assuring compliance with federal requirements used up precious, limited federal funds overseeing every tribal move, leaving far too little for direct services level. Congress wisely decided to remove most of the federal oversight and authority in favor of transferring funds and the discretion about how best to use them to the tribes, to the local level where accountability is swift. Today, following 10 years of successful implementation of tribal self-governance, we see return to the re-entrenchment of this bureaucracy.

We, therefore, view the NAPA recommendations to increase BIA administrative and management capacity with mixed feelings and some degree of skepticism and concern. Yet, we recognize the need to improve some critical functions, e.g. data collection and improve the efficiency of the system. We are aware that funding has been appropriated to the BIA to begin implementation of these recommendations and that this implementation will require substantial changes in the role of

the Office of Assistant Secretary and in all units of the BIA. NCAI believes that these decisions regarding any re-organization of the BIA must be developed in consultation with tribal governments and consistent with the fundamental principles of self-determination.

IV. Funding& Budget Considerations

Over the last several years, the BIA has been the subject of an onslaught of reorganization, devolution, transfers, downsizing, buy-outs, early retirements, and Reductions In Forces (RIFs). In February 1996, through the acceptance of 864 buy-outs, by not filling those positions as required by law, and by leaving vacant another nearly 1,000 vacant positions that had been funded during fiscal year 1995, the BIA executed a reduction in force. Even after these extreme measures, BIA still either reassigned, downgraded, or separated nearly 700 people.

The majority of the actual "job losses" were in Central Office East (D.C.) and Central Office West (Albuquerque). About 30 to 40 percent of these losses were administrative, clerical or analytical. The first targets were management and elimination of duplication. The most protected programs were basic programs such as law enforcement, social services and education. Among the least protected were positions in the Office of Trust Responsibilities. Personnel for the management of agriculture and rangelands was reduced by 80 percent in the Central Office and 40 percent at the Agency and Area Offices.

To the extent that the Assistant Secretary and BIA personnel are still permitted to participate in policy formulation within the Department, they now lack the technical advice and expertise to advocate for tribes against the other interests of the Department which are in conflict with Indian tribal interests.

In FY2000, \$5.0 million was appropriated to begin implementation of the NAPA recommendations. Let me say that we support this funding increase to initiate the process of addressing the Bureau's administrative problems and weaknesses.

However, we must emphasize that tribal input on the improvement in these Bureau systems (e.g. financial management issues, budget operations and information resource development) is essential. Following are some specific suggested actions:

- Establish a comprehensive database system in 2000 and maintain current statistical information about tribally-specific unmet needs on an on-going basis.

There is an inadequate data collection system within the BIA to provide for comprehensive reporting regarding the expenditure of tribal program funding and identification of unmet needs. In May 1999, the Tribal Report on Tribal Needs Assessments including Tribal Priority Allocations (TPA) concluded that current base TPA funding levels are wholly inadequate to provide tribes with even basic programs and services. This was demonstrated by the comparison of TPA funding to relevant national standards. The NAPA report acknowledges that tribal funding is far below national standards for comparable programs and that the BIA's TPA system provides funds

to partially fulfill the federal trust responsibility through supporting critical and essential tribal governmental services.

The tribes do not agree with the Bureau assertions that these funds cannot be identified or quantified to account for their use. NCAI believes that a reporting system can be structured to be useful, but not unduly burdensome to tribal staff. We recognize and support the need for program measures baseline data to be submitted for budget formulation and justification to increase funding to address tribal unmet needs.

The BIA and tribal reports on TPA developed a format that would identify and gather tribal-specific unmet program and service needs. The tribes believe that this system would address provide for the accountability issue raised by the Bureau and identified in the NAPA report. We recommend that the BIA develop and implement, in consultation with tribes, a comprehensive database system and maintain current statistical information about tribally-specific unmet needs on an on-going basis.

- Provide additional staff to the Office of Self-Governance for financial management functions.

In FY2000, a total of \$240 million in funding has been obligated and transferred from the BIA to 216 Self-Governance tribes. The financial management functions assumed by the Office of Self-Governance (OSG) include budget execution and formulation activities, accounting and reporting, management of contract awards and contract support costs related to self-governance agreements and information system technology. In FY2001, the Office of Self-Governance will be assuming additional functions related to expansion of its telecommunications and information technology.

Approximately 50 percent of all tribes are operating their programs under self-governance annual funding agreements. However, the OSG currently has a total of 3 FTE's for all financial and budget activities. In comparison, the Bureau's system for the remaining 340 tribes include a significant higher number in the central, regional and agency offices. In FY1992, the OSG financial staff assisted in the design of a sophisticated database system which tracks all program funding, by line item for every self-governance tribe. Since that time, OSG has implemented this financial database system which accounts for every dollar transferred to the self-governance tribes. In many respects, the OSG has demonstrated and implemented a streamlined financial system in comparison to other BIA budget operating units. However, the OSG should not be penalized for these efficiencies. We recommend that the OSG be included in the BIA's overall workload analysis and that appropriate funding be identified for this Office.

V. Need for Adequate Tribal Consultation on BIA Re-Organization Issues

As we have noted several times in this testimony, we strongly believe that tribal input and active participation regarding BIA re-organization issues is essential. While certainly the NAPA report provides some constructive recommended actions, many tribes are concerned that greater emphasis has been placed on the NAPA report which has had limited tribal input.

In August 1994, the joint Tribal/BIA/DOI Task Force on the Reorganization of the Bureau of Indian Affairs' released its final report. This 43-member task force consisted of three DOI representatives, five BIA representatives and 36 tribal representatives (three from each of the twelve BIA Areas) nominated by the tribes and appointed by the Secretary of Interior. The task force spent four years gathering information, developing ideas and concepts, and conducting 22 task force meetings throughout Indian Country, all in an effort to generate a report to the Secretary and the Congress that highlighted the collective recommendations from Indian tribes, the BIA and the DOI on how best to reorganize the BIA. The task force created four leading themes in the reorganization plan - organizational reform, regulatory reform, educational reform and budgetary reform.

Six years later, the BIA has failed to implement many of the recommendations regarding "Organizational Design" section of the BIA. In fact, the BIA has ignored most of these recommendations which were developed with significant tribal involvement. We believe that the recommended reforms included in the Joint Tribal/BIA/DOI Final Report must be considered along with the recommendations included in the NAPA report; and that tribal leaders be actively involved in this process.

VI. Conclusion

Mr. Chairman, thank you for the opportunity to present this statement on the NAPA Report on the management and administration of the BIA. The BIA is the primary Federal agency whose sole responsibility is to advocate and advance the empowerment of tribal governments to serve their members. It is critically important that the implementation of these NAPA recommendations are conducted with respect to the Congressional devolution goals to empower all governments, including tribal governments.

We are now in the 21st century. Tribes firmly believe they should be in control of our future- not the BIA and the old paternal system. The strengthening of the BIA system based on the NAPA report must be an opportunity to refine the Bureau's capacity and capability to assist the tribes' in achieving their goals, not to resurrect the old bureaucratic obstructions.

We are optimistic about their opportunity. We look forward to working with the Committee and appreciate your leadership regarding the sensitive federal-tribal relationship. I would be happy to respond to any questions you may have.